ARAH CIPTA SDN. BHD. & ANOR.

v.

KIAN KEE SAWMILLS (M) SDN. BHD. & ORS. (NO. 2)

COURT OF APPEAL, KUALA LUMPUR
SHAIK DAUD ISMAIL JCA
MAHADEV SHANKAR JCA
ABU MANSOR ALI JCA
[CIVIL APPEAL NO: W-02-646-95]
2 SEPTEMBER 1996

LAND LAW: *Caveats - Removal - Whether proper - Serious questions to be tried - Whether established - National Land Code 1965, s. 327*

The facts of this appeal are as tabulated in the preceeding appeal, i.e. Appeal No.W-02-407-95. However, pursuant to the learned Judge's decision removing the appellants' caveat therein, a question arose as to whether such order was proper bearing in mind the circumstances and the facts of the case.

Held:

Per Abu Mansor Ali JCA:

The appellants' claim, as laid out in the statement of claim, were supported by evidence which needed to be ventilated as they all contain serious questions to be tried. It follows therefore that the caveat should have been retained to maintain the status quo pending the disposal of the whole case.

[Appeal allowed.]

*[**Bahasa Malaysia** Translation of Headnotes]*

UNDANG-UNDANG TANAH: *Kaveat - Pembatalan - Samada wajar - Persoalan serius untuk dibicarakan - Samada ditetapkan - Kanun Tanah Negara 1965, s. 327*

Fakta-fakta rayuan ini adalah seperti yang dijadualkan dalam rayuan yang terdahulu iaitu Rayuan No. W-02-407-95. Walaubagaimanapun, selaras dengan keputusan Hakim membatalkan kaveat perayu di dalamnya, suatu persoalan berbangkit berhubung dengan samada perintah yang sedemikian adalah wajar mengambilkira keadaan dan fakta-fakta kes.

Diputuskan:
Oleh Abu Mansor Ali HMR:

Tuntutan perayu, sepertimana yang dibentangkan dalam pernyataan tuntutan, telah disokong oleh keterangan yang perlu dibicarakankan kerana kesemuanya mengandungi persoalan-persoalan serius untuk dibicarakan. Ianya mengikut bahawa kaveat itu seharusnya dikekalkan bagi mempastikan *status quo* sementara menantikan penyelesaian keseluruhan kes tersebut.

[Rayuan dibenarkan.]

[Appeal from High Court, Kuala Lumpur; Civil Suit No: S1-22-101-1995]

For the appellant - Logan Sabapathy (S. Nainappan with him); M/s. Logan Sabapathy & Co.
For the respondent - Gooi Soon Seng (Selvi Sandrasegaram and Y.K. Boo with him) M/s. Gooi & Co.

JUDGMENT

Abu Mansor Ali JCA:

In this appeal W-02-646-95 referred to as the 2nd appeal in our grounds of judgment in W-02-407-95, the appellants appeal against the decision of the learned Judge allowing the 1st respondent's application for the removal of the caveat lodged by the appellants. The learned Judge made such order immediately after striking out of the writ and statement of claim.

The fact of this case are as stated in the grounds of judgment in the 1st appeal. The grounds the learned Judge gave for removing the caveat was as stated in his grounds of judgment at p. 20 of appeal record.

> Assuming without deciding that the FIC consent has been given although to another party Dualthree (M) Sdn. Bhd., what seems clear is that as regards the consent and confirmation by the chargee-bank there has been none nor has there been the deposit of RM100,000 under the supplemental agreement.

We proceeded to hear the appellant's Counsel's submission to see whether there was consent and confirmation by the chargee-bank and whether the appellant's Counsel could establish that there has been deposit of RM100,000.

After hearing both Counsel submission, and after having the benefit of hearing submissions in the 1st appeal, we had to conclude we were satisfied that the appellants' claim, as laid out in the statement of claim, were supported by the

evidence which, as we had decided in the 1st appeal, needed to be ventilated as they all contain serious questions to be tried. Since our decision was such it followed that the caveat should have been retained to maintain the status quo pending the disposal of the whole case. We allowed the appeal with cost and set aside the order of the learned Judge.

Reported by WA Sharif